IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.119 OF 2007

Shri Gajanand Jaywant Sonawane .. Petitioner

Versus

Maharashtra Housing & Development Authority & Anr. .. Respondents

Mr.Nitin Vhatkar i/b G.Hiranandani for the petitioner

Mr.K.R.Belosey, Off. G.P. for respondent no.1 and 2

CORAM: J. N. PATEL &
S.C.DHARMADHIKARI, JJ.

DATE: 26ST FEBRUARY, 2007

ORAL JUDGMENT: PER J.N.PATEL, J:

1. Rule. Rule made returnable forthwith.

2. The learned counsel for the petitioner as well as the learned G.P. for the respondent no.1 and 2 submitted that the petition can be disposed of at the stage of admission as the respondents have also

filed their affidavit in reply which be treated as their return and therefore, we have heard the learned counsel appearing for the petitioner as well as the learned G.P. for the respondents and dispose of the petition at the stage of admission itself.

3. In response to the advertisement issued by respondent no.1 in the "Indian Express" on 09.09.2006 which is annexed as Exhibit 'F', the petitioner applied for the post of Junior Clerk and Typist reserved for low vision / partially sighted in open category. In support of his case, the petitioner annexed the certificates issued by the Lokmanya Tilak Hospital, Sion, Mumbai and also the Civil Surgeon of District Hospital at Nashik certifying that the percentage of disability which the petitioner suffers is of the nature of 75% blind which were probably issued for the purpose of traveling concession. The petitioner was called for written examination and interview on 19.01.2006.

4. It is the case of the petitioner that he passed his written examination as well as oral interview conducted by respondent no.1. According to the petitioner, during the oral interview, the petitioner was asked to read the passage from the book, as being a

part of the oral interview, which the petitioner had read it over before the Interview Panel successfully. On 22.11.2006, the petitioner was sent for medical test before Medical Board of J.J.Hospital which he duly attended and was examined by the Medical Board. The petitioner was shocked and surprised to receive a letter dated 11.12.2006 from respondent no.1 by which the petitioner's appointment as Junior Clerk / Typist was cancelled on the ground that he was declared 100% blind by J.J.Hospital. It appears that thereafter the petitioner approached through the National Federation of the Blind, Maharashtra (NFBM) and requested respondent no.1 to furnish a copy of the medical report of J.J.Hospital and also made a representation in the matter. NFBM by letter dt. 28.12.2006 also requested respondent no.1 not to cause any injustice to the petitioner and to give him an employment for the post of Junior Clerk / Typist. The respondent no.1 did not entertain the representation made by the petitioner or request made by NFBM and proceeded to re-advertise the post. It is in these facts and circumstances that the petitioner approached this court invoking its extraordinary jurisdiction seeking an order of this court to call for record relating to the Medical Report dated 22.11.2006 along with all necessary papers and proceedings

pertaining to the employment of the petitioner for the post of Junior Clerk / Typist issued by the respondents and after examining legality, proprietary and validity of the said Medical Report dated 22.11.2006 to quash, cancel and set aside the same. He further seeks Writ of Mandamus to the respondents to appoint the petitioner as a Junior Clerk / Typist in the office of respondent no.1. In the meantime, the petitioner sought as an interim order, restraining the respondent no.1 from conducting fresh interviews for the post of Junior Clerk / Typist (open) on 05.02.2007.

5. In response to the notice issued to the respondents, respondent no.1 have filed affidavit of Shri Machindra Namdeo Najan, Admistrative Officer of Maharashtra Housing and Area Development Authority i.e. Respondent no.1. According to the respondent no.1, after the petitioner was selected for being appointed on the said post, as per the procedure prescribed, all candidates are required to undergo medical examination by the Handicapped Board of Doctors appointed by J.J.Group of Hospitals in accordance with the Government Resolution dated 06.05.2004 issued by the State Government. The respondents have relied upon Clause 6 of the said Government Resolution which provides that it

is necessary that after the candidate is selected and before his appointment is finally made, the candidate is required to undergo the medical examination by the Medical Board appointed by the State Government and after the said Medical Board certifies the candidate that he is able to work on the concerned post, the final appointment can be made. It is the case of the respondent no.1 that as the petitioner's Medical Report sent by the Board of Referees of the Grant Medical College, J.J. Hospital states that the petitioner is permanently disabled as 100% blind, the respondent is unable to accept him in the employment and as the petitioner was disqualified, the respondents have issued fresh Public Notice for the same post in Loksatta Daily on 12th January, 2007 and the interviews will be held on 5th February, 2007, when selection will be made and, therefore, it is contended that the petitioner has no case and the petition is liable to be dismissed.

6. The respondent no.2 was also called upon by this court to file an affidavit in reply and accordingly Chairman, Board of Referees, Grant Medical College, Dr.Tatyarao Pundalikrao Lahane has filed his affidavit. In the affidavit in reply filed by Chairman, Board of Referees i.e. respondent no.2, it has been stated that the petitioner

was duly examined by the Board by Panel of experts consisting of 3 ophthalmologist i.e. Dr.T.P.Lahane, (M.S.Opthalmology), Chairman, Dr.Ragini Parekh, (M.S.Opthalmology), Associate Professor and Member, Dr.Sanjeev Shah, (M.S.Opthalmology), Hon.Professor at G.T.Hospital as Member which is the board constituted by the Government of Maharashtra under the provisions of MCSR (Maharashtra Civil Service Rules, 1956) as per G.R. dated 06.05.2004. The board on examination of the petitioner found that his vision in the Right Eye is No.P.L. (No Perception of Light). It was Finger Counting from 1 meter distance of the Left Eye. His Right Eye is shrunken (small) called Phthisis Bulbi. His Left Eye is having central corneal opacity with Optical Iridectomy I Upper Temporal quadrant. He has both eyes Nystagmus. His colour vision test was not possible to record due to poor vision. His fundus examination was not possible due to hazy media in the left eye, the details were very hazy. Along with their affidavit in reply, the respondents have annexed a copy of the Examination Paper duly signed by all the three members of the Board and the Certificate.

7. It is the case of the respondent no.2 that they have examined the Certificate issued by the Civil Surgeon, Nasik on 09.01.2003 to the petitioner and it is apparent that no detail examination findings are stated in the said Certificate. In order to satisfy themselves, the Board called upon the petitioner to type a paragraph of a text which is typed by him and it is found that he could do so possibly out of practice and have stated that blindness is decided according to the definition and not by practice or Expertise in that work. Along with their affidavit in reply, they have also enclosed typed page duly signed by the petitioner on 22.11.2006. In the opinion of the Board as specified in the affidavit, the post was advertised for Low Vision. The petitioner does not fall under the said category and as the required vision is less as per the criteria laid down, he was issued a Certificate that the petitioner 's percentage of disability is 100% blind.

8. The learned counsel for the petitioner submitted that in addition to the Medical Certificate of the Civil Surgeon which certifies percentage of blindness of the person as 75% and that he is not fully blind person but having partial sight, the Board of Referees probably failed to examine the petitioner properly as required, and

on the other hand, went on to conduct a typing test which was not within their premise and therefore, the Medical Report of Medical Board of J.J.Hospital as 100% blind is improper, incorrect and bad in law and liable to be set aside.

9. It is the contention of the learned counsel for the petitioner that once the petitioner has passed written examination and oral interview as conducted by respondent no.1, it sufficiently evidences the fact that he is eligible candidate for appointment as Junior Clerk / Typist and that during the oral interview, the petitioner was called upon to read a passage from the book and after being satisfied, he has been declared successful. Therefore, merely because the Board has certified him as 100% blind, cannot be accepted in the backdrop of aforesaid facts.

10. The learned counsel for the petitioner even offered to demonstrate before this court that the petitioner can read and type and that he is not fully blind, as part of evidence in support of his claim.

11. Mr.Belosey, the learned G.P. for the respondents submitted that in absence of the fact that the petitioner has not attributed any

malafide or brought on record any material to disbelieve the opinion/report of the respondent no.2, there is no reason to disbelieve the said report which is binding on the respondent no.1 and respondent no.1 was justified in rejecting the claim of the petitioner that he falls in the category of low vision or partially sighted.

12. Mr.Belosey, the learned G.P. submitted that though in the affidavit in reply filed by respondent no.1 it is denied that the petitioner has successfully passed his written and oral examination before he was selected, he has pointed out that in the correspondence with the National Federation of Blind, Maharashtra which insisted that the case of the petitioner be considered as per the circular dated 03.09.2006 issued by the Government of Maharashtra in which it was stated not to discriminate between P.S.L.V. and total blind and such persons should be given equal opportunity in appointments and question the conduct of the respondent no.1 in declaring successful and accepting the certificate of respondent no.2 board disqualifying him from the service. There is a mention of the fact in their letter dated 20.12.2006 addressed to the Secretary of National Federation of Blind, Maharashtra that in fact Shri

Sonawane i.e. the petitioner has taken an assistant to help him in giving written examination and therefore, this can be accepted as a plausible explanation as to how the petitioner passed the test and interview.

13. Mr.Belosey, the learned G.P. submitted that probably as the petitioner was the only candidate who responded to the above, his case was considered sympathetically but in view of the fact that the Medical Board has held and certified that the permanent disability percentage is 100% blind, the petitioner's case cannot be considered for appointment.

14. We find that the respondent no.1 and 2 have considered the case of the petitioner with the required sympathy as he was the only candidate available in the said category. There is no material placed before us to demonstrate that the Board of Referees, Grant Medical College before whom the petitioner was referred for medical examination, has not properly conducted the medical examination. Respondent no.2 has rightly contented in the affidavit in reply filed by the Chairman, Board of Referees that the certificate issued by the Civil Surgeon, Nasik on 09.01.2003 to the

petitioner is for the purpose of his eligibility for traveling concession and that no detail examination findings are stated in the said certificate. Considering the qualification and expertise of the Chairman and members of respondent no.2 Medical Board, the certificate issued by them declaring the petitioner as unfit cannot be doubted and strictly speaking, the decision of the board to go for fresh advertisement is in accordance with the policy of the State in the matter which has been specified in the Government Circular No. Handicap-1003/M.No.127/2003/16-A, Mantralaya, Mumbai 400 032 dated 06.05.2004 and the only direction in the matter which can be given to the respondents is to reconsider the case of the petitioner on humanitarian ground as we do not propose to permit the petitioner to lead any evidence in the matter as to whether the petitioner is suitable for being appointed as Junior Clerk / Typist for category 'C' Low Vision / Partially Sighted as the Recruitment Policy of MHADA under the category of physically handicapped persons excluded total blind person from the category which has been undertaken under the special drive programme.

15. In the case of **National Federation of Blind Vs. Union Public Service Commission and Others reported in 1993 2 Supreme Court Cases 411,** it is held as under:

"2. The visually handicapped constitute a significant section of our society and as such it is necessary to encourage their participation in every walk of life. The Ministry of Welfare, Government of India has been undertaking various measures to utilise the potentialities of the visually handicapped persons. The Centre as well as the State Governments have launched several schemes to educate, train and provide useful employment to the handicapped. The Central Government has provided reservations to the extent of 3% vacancies in Group 'C' and 'D' posts for the physically handicapped including blind and partially blind.

16. In the case of **Amita Vs. Union of India and Another reported in (2005) 13 Supreme Court Cases 721** it is held as under:

"The first expression "equality before the law" contained in Article 14, which is taken from the English common law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. It also means that amongst equals the law should be equal and should be equally administered and that likes should be treated alike. Thus, what it forbids is discrimination between persons who are substantially in similar circumstances or conditions. It does not firbod different treatment of unequals.

Article 14 of the Constitution is both a negative and positive right. Negative in the sense that no one can be discriminated against : anybody and everyone should be treated as equals. The latter is the core and essence of the right to equality and the State has the obligation to take necessary steps so that every individual is given equal respect and concern which he is entitled to as a human being. Therefore, Article 14 contemplates reasonableness in State action, the absence of which would entail the violation of Article 14 of the Constitution.

The only restriction on visually impaired persons being appointed to posts in Government employment that can be spelled out from National Federation of Blind case, (1993) 2 SCC 411, is whether the post in respect whereof the petitioner sought consideration is liable to be considered as totally unsuitable for a visually handicapped person having regard to the nature of duties attached to the office/post."

17. Therefore, considering the aforesaid decision rendered by the Supreme Court in the case of National Federation of Blind Vs. Union Public Service Commission and Others and Amita Vs. Union of India and Another, we direct the respondent no.2 to re-examine the petitioner and if in their opinion, his case can be recommended for the post of Junior Clerk / Typist under the said category by approaching the case of the petitioner in accordance

with the definition given in section 2(u) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which reads as under:

> "person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device."

And for that purpose, we refer the petitioner to the Board for re-examination and direct the petitioner to report to the Board within a period of two weeks for the purpose of his re-examination by the Board. The Board while evaluating the eligibility of the petitioner during his re-examination shall keep in its mind the Guidelines for Evolution of Various Disabilities and Procedures for Certification, 2001-Notification issued by Ministry of Social Justice and Empowerment dated the 1st June 2001 and classify the category of petitioner in terms of the table given in appendix III of the said notification provided for Categories of Visual Disability.

Category	*Better eye*	*Worse eye*	*%age impairment.*
Category O	6/9 – 6/18	6/24 to 6/36	20.00%
Category I	6/18-6/36	6/60 to Nil	40.00%
Category II	6/40-4/60 or field of vision 10^{o} - 20^{o}	3/60 to Nil	75.00%
Category III	3/60 to 1/60 or field of vision 10^{o}.	F.C. At 1 ft.to Nil	100.00%
Category IV	F.C. At 1 ft. to Nil or field of vision 10^{o}.	F.C. At 1 ft. to Nil	100%
One eyed persons	06/06/07	F.C. At 1 ft. to Nil or field of vision 10^{o}.	30.00%

18. Incase the board on re-examination finds him suitable for the post with potentially capable of using vision for the planning or execution of a task with appropriate assistive device, the Board would consider recommending the petitioner's case for appointment to the said post.

19. Before we part with the decision, we may also observe that even otherwise if the Respondent no.2 Medical Board finds that the petitioner's case cannot be considered for appointment by following the Circular dated 03.09.2006 issued by the Government of Maharashtra, which is in consonance with that of the Central Government and also highlighted in the Judgment of National

Federation of Blind Vs. Union Public Service Commission and Others and Amita Vs. Union of India and Another and can consider the Government Circular dated 06.05.2004, particularly considering that the petitioner was the sole candidate to respond to the advertisement. Rather than keeping the post vacant for the next recruitment year, the petitioner can be accommodated by making available suitable candidate by doing interchange so as not to discriminate between partially sighted/low vision and totally blind so that persons in these two categories can be given equal opportunity in appointment. This is left to the conscious discretion of the respondent no.1 MHADA or the petitioner can be permitted to appear in the examination in response to the impugned advertisement so as to give him fair opportunity to compete with other candidates in the same category.

18. Petition stands disposed of in the aforesaid terms with no order as to costs. Rule accordingly.

(J.N.PATEL)

(S.C.DHARMADHIKARI)